IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 193 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

METIBEN WD/O BADARMAL KHEMCHAND

Versus

BABULAL MULCHAND SONI

Appearance:

MS KUSUM M SHAH for Petitioner

MR PK JANI for Respondent No. 1

NOTICE SERVED for Respondent No. 3

NOTICE UNSERVED for Respondent No. 6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/09/2000

ORAL JUDGEMENT

This revision application has been preferred by one Metiben, widow of Badarmal Khemchand, who claims possession of the muddamal articles, against the judgment

and order dated 16th April, 1996 passed by the learned Addl. Sessions Judge, Banaskantha in Criminal Appeal No. 36 of 1984. On 10th June, 1978, one Javanmal Khemchand lodged a complaint that during the previous night, some thieves had entered the house of his brother Badarmal Khemchand and gold ornaments mentioned in the complaint were alleged to be stolen. Pursuant to the investigation made by the police, certain articles of ornaments were recovered from the accused persons. There being no dispute as regards the ownership of those articles, they were ordered to be delivered to the owner Badarmal Khemchand. However, it was alleged that certain articles were got melted by the accused-thieves and were sold to Sonis [Goldsmiths] of Patan Town through the accused no. 6 Amratbhai Sartanbhai. The muddamal articles nos. 3 to 7-gold ingots of different weights were recovered from the two Sonis viz., Babulal Mulchand and Kantilal Surajmal. The accused, six in number, were tried for the offence and were acquitted. An inquiry was held as regards the muddamal articles nos. 3 to 7, the above referred ingots, by the learned Judicial Magistrate, First Class, Deesa under Section 452 CrPC. By his judgment and order dated 18th May, 1984, the learned Magistrate held that the gold ingots [muddamal articles nos. 3 to 7] recovered from two Sonis - Babulal Mulchand and Kantilal Surajmal were the same which were sold to them by the accused no. 6, after melting the ornaments stolen by the accused nos. 1 to 5, from the house of Badarmal Khemchand. The learned Magistrate, therefore, directed that the muddamal articles nos. 3 to 7 be delivered to Bai Metiben, widow of Badarmal Khemchand. Feeling aggrieved, the two Sonis-Babulal Mulchand and Kantilal Surajmal preferred above referred Criminal Appeal No. 36 of 1984 before the learned Sessions Judge, Banaskantha. The learned Addl. Sessions Judge allowed the said appeal on 16th April, 1996 and ordered that the gold ingots, muddamal articles nos. 3 to 5, be delivered to the appellant Kantilal Surajmal and the gold ingots, muddamal articles nos. 6 and 7, be delivered to the appellant Babulal Mulchand from whom the same were recovered. Feeling aggrieved, Bai Metiben has preferred the present Revision.

Ms. Shah has submitted that the inquiry envisaged under Section 452 CrPC is of civil nature and the evidence which may not be otherwise admissible in a criminal trial can as well be considered for an enquiry under Section 452 CrPC provided such evidence is duly proved. She has submitted that in the present case, the statements made by the accused before the Police have been duly proved by the evidence of the concerned police

officer Shri Sharadchandra Keshavlal Purohit. The statements made by the two Sonis - Kantilal Surajmal and Babulal Mulchand have also been proved. She has submitted that the entire link of the ornaments stolen from the house of Badarmal Khemchand to the gold ingots articles nos. 3 to 7 recovered from Kantilal Surajmal and Babulal Mulchand has been duly established and there is no doubt that the muddamal articles are the melted pieces of the stolen gold ornaments. Hence, the said muddamal articles ought to be delivered to the petitioner Metiben Badarmal. She has relied upon the judgments of this Court in the matters of State of Gujarat v. Nareshbhai & Naranbhai Jivajibhai Harijan & Ors., [1988 (2) GLR 925] and of Gokaldas Kalyanji & ANR VS Mohanlal Manjibhai & the State (1962 GLR 796).

Mr. Unwala has contested the petition. He has submitted that the muddamal articles nos. 3 to 7 are totally different from the gold ornaments alleged to have been stolen from the house of Badarmal Khemchand. Neither the nature, the shape, value or the weight connects the muddamal articles to the gold ornaments stolen from the house of Badarmal Khemchand. Since the muddamal articles were recovered from the witnesses Kantilal Surajmal and Babulal Mulchand and since the accused have been acquitted, the said muddamal articles are required to be delivered to the concerned witnesses. In support of his arguments, he has relied upon the judgments in the matter of Patel Keshaval Venidas v. Kachiraji Nanaji Thakore & Ors., [XXIII (2) GLR 418] and in the matter of Soni Chimanlal Jethalal v. State of Gujarat & Anr., [1993 (2) GLH 1060].

In the matter of Gokaldas Kalyanji & Anr.(supra) this Court has held that, `..there is no bar to the admissibility of the police statement of the accused for the purpose of an inquiry under sec. 517 of the Criminal Procedure Code. The provisions of sec. 25 of the Evidence Act and sec. 162 of the Criminal Procedure Code do not affect the admissibility of such statement for the purpose of such inquiry but that cannot dispense with the necessity of proof of such statement before it can be taken into consideration.'

In the matter of State of Gujarat v. Nareshbhai @ Naranbhai Jivajibhai Harijan & Ors. [Supra], this Court has held that, `..It is the established principle of law that no one can give what he has not got ie., a person having no title or authority over the article cannot give better title to the purchase. If one deals with the goods of another without his authority, the

transaction is as against that other person nugatory in law. This principle of law is embodied in Sec. 27 of the Sale of Goods Act, 1930 but is subject to certain exceptions such as dealing with the currency notes or negotiable instruments and certain other exceptions provided under the Sale of Goods Act.'

In the matter of Patel Keshavlal Venidas [Supra], this Court on facts found that, `..in this case, the ornaments are not in existence. They were already melted and police in order to have equivalent of those ornaments got the ingot of gold of the same value or weight from present opponent no. 2's deceased father. Therefore, by no stretch of imagination it can be said that this muddamal is covered by sub-section (5) of sec. 452 of the Code, so as to be available to the petitioner-complainant.' In the matter of Soni Chimanlal Jethalal [Supra], this Court has held that, `..Ordinarily and as a general rule, the muddamal property should be returned to the person from whose custody it is seized in the case where acquittal is ordered. Thus, the general rule is that the property seized from a person should be returned to him when he is acquitted of the charge. No doubt, this rule has exceptions when the criminal Court finds that the property was in possession of the complainant and the accused took it away without his permission and it was subsequently recovered from his possession by the police and in that case, the muddamal article should be ordered to be returned or restored to the complainant. Thus, the general rule has certain and several exceptions depending on the circumstances of each case and there cannot be any straight jacket formula and therefore, no person can claim, as of right, that the property seized from him should be returned to him in such a contingency.'

Section 452 CrPC deals with the disposal of the property at conclusion of trial. Sub-section 5 thereof provides that the " term `property' includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party but also any property in to or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise ".

The above referred sub-section 5 makes it clear that the property referred to in Section 452 CrPC, the gold ornaments in the present case, shall also include the gold ingots, into which the stolen ornaments are

alleged to have been converted into. It is also established that the statements made before the police by the accused, which are not admissible in evidence in course of trial against the accused, can be used for the purpose of inquiry under Section 452 CrPC; if proved.

In the present case, the statements made by the accused before the police have been proved by the evidence of the police officer and are admitted to evidence at Exh. 89, 99, 90 and 100 and the statements made by the two witnesses viz., Kantilal Surajmal and Babulal Mulchand are admitted in evidence at Exhs. 94 & 95 respectively. The statements of other witnesses Soni Amrutlal, Soni Poonamchand, Vasantrao and Jagdishchandra are also admitted in evidence at Exhs. 90, 91, 92 and 93 respectively. Considering the evidence on record, in my view, it is proved that the gold ornaments stolen from the house of Badarmal Khemchand were distributed amongst the accused and were cut into pieces. The said pieces of ornaments were taken to the witnesses Jagdishchandra or Vasantrao with the help of accused no. 6 - Amrutbhai and were melted and converted into ingots. The said ingots were sold by Amrutbhai to the witnesses Kantilal Surajmal and Babulal Mulchand, who had produced the same from their possession upon inquiry made by the police. Besides, the witness Kantilal Surajmal or Babulal Mulchand have not led any evidence in respect of their possession of muddamal articles ie., they have not shown that the muddamal articles were received by them from any person other than the accused Amrutbhai Sartanbhai. Considering the evidence of the panchwitness and the panchnamas, it cannot be said that the muddamal articles were produced by the witnesses Kantilal Surajmal or Babulal Mulchand under any duress by the police. Nor was it their case that the gold ingots produced by them were not the same which were purchased by them from the accused no. 6 Amrutbhai. Thus, the identity of the gold ingots; muddamal articles nos. 3 to 7 can safely be linked with the gold ornaments stolen from the house of Badarmal Khemchand. The learned Magistrate was, therefore, right in ordering delivery of the muddamal articles nos. 3 to 7 to the present petitioner Bai Metiben, widow of Shri Badarmal Khemchand. In my view, the learned Addl. Sessions Judge has not correctly addressed himself in this regard.

In the result, the revision application succeeds. The judgment and order dated 16th April, 1996 of the learned Addl. Sessions Judge, Banaskantha passed in Criminal Appeal No. 36 of 1984 is quashed and set-aside. The judgment and order of the learned Judicial

Magistrate, First Class, Deesa below Application Exh. 105 in Criminal Case No. 442 of 1979 is restored. Rule is made absolute.

At the request made by the learned advocate Mr. Unwala, it is directed that the muddamal articles nos. 3 to 7 shall not be delivered to the petitioner Metiben till 18th October, 2000.

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Prakash*